

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE RAMON HERNANDEZ,

Defendant.

Criminal No. 97-228 (JAF)

**UNITED STATES' MOTION REGARDING PROCEDURAL POSTURE OF CASE AND
REQUEST FOR A NEW TRIAL HEARING**

COMES NOW, The United States of America, by and through the undersigned attorneys and, respectfully states and prays as follows:

1. The Defendant has filed a motion requesting that this Honorable Court set the case for a re-sentencing.
2. In his motion, defendant makes many statements that need to be clarified. The purpose of this motion is to clarify those matters for the purpose of the record.
3. First, at paragraph 2 of his motion, defendant states that each party has agreed and stipulated that a re-sentence is the most convenient to all. The Government submits that while convenience is certainly a consideration, it is not the ultimate issue in this case. It is important to note that, as indicated by the First Circuit Court of Appeals, this case is still before the Court on defendant's motion for new trial. At the status conference, the Court asked the parties to first consider the possibility of some sort of agreement that would eliminate the need to hold an evidentiary hearing, thereby rendering defendant's motion moot. To that end, the Government promptly provided the defendant with an offer of 180 months of imprisonment. That offer remains open to defendant.

4. Defendant also states at paragraph 3 of his motion that prior to trial he had received an offer to plea to a level 32, and receive a sentence of 121 months. Once again that is correct. However, defendant fails to mention that he rejected that offer, proceeded to trial, and received a sentence of 293 months of imprisonment, which he is currently serving. Thus, the current offer of the United States, which would eliminate all pending issues in this case, is a net gain of 113 months for the defendant.
5. The United States submits that unless defendant notifies his intention to accept the Government's offer of 15 years, which is a reasonable offer given the circumstances, there is no agreement between the parties, and the case remains pending for new trial.
6. As such, the United States requests a final term, up to and including November 15, 2006, to determine whether or not the defendant will accept the Government's offer. If that offer is not accepted, the Government requests that the motion for new trial be considered by the Court, as outlined in our filing dated September 6, 2006 (Docket #259).

WHEREFORE, in view of the foregoing, it is respectfully requested that the Court take consideration of the above and rule accordingly. **RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 30th day of October, 2006.

Rosa E. Rodriguez Velez
United States Attorney

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Certificate of Service

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of
the Court using the CM/ECF system which will send notification of such filing to the attorneys of
record for the defendants.

At Hato Rey, Puerto Rico, October 30, 2006.

s/Timothy R. Henwood
U.S.D.C. No. 218608